in the promotion of thought along lines of finance-administration and accounts, may there come together and have the benefit of council as well as avail themselves of the advice of those who are continuously kept in the field by the Department of Commerce and Labor. The Committee on Uniform Municipal Accounts and Statistics of the National League has also in preparation a treatise on the subject, and it is the hope of the League that through its instrumentality the best thought on the subject of finance-administration statistics and accounts may be here made available.

If from the papers which have been presented any conclusion may be drawn which may serve as a guide for future action, it would seem to be that the laws and charter changes made in the past have followed the work of these independent agencies engaged in the formation of public opinion; that reform in popular government can never precede a well settled conviction among the peoeple and an active co-operation to secure results. Back of the law and back of constitutional changes, therefore, we must look to the agencies of political education and to those many patriotic societies which are giving form and national expression to local ideals as a basis for public law.

GOVERNMENTAL INTERFERENCE WITH INDUSTRIAL COMBINATIONS.

EDWARD B. WHITNEY.

I shall not attempt to cover the whole trust question in twenty minutes. I shall assume that, whether for economic, political, social or moral reasons, you desire some higher power to interfere with the so-called industrial trusts [1] if effective interference be practicable without doing more harm than good; and that you ask me only to express the views of a lawyer, from a legal standpoint, as to what remedies may be available to the Federal Government, which alone is strong enough to grapple with the situation.

[1] The word trust, in its modern and anomalous use, may be defined to mean a combination rich and powerful enough to affect any industry in which it is engaged, and therefore to constitute a political issue.

True, some lawyers and statesmen of the first rank still argue that all regulation should be left to the states. But they are generally elderly men, whose views became fixed under conditions that are past. No single state is strong enough now. The Constitution does not allow any group of states to form an alliance among themselves. It does not allow them to compete with each other; and too many of them compete for corporation patronage.

I shall assume that you wish me to confine myself to remedies which are direct in their operation. I shall say nothing about the tariff, or about special railroad privileges. You are the experts best qualified to tell whether the trusts that have built themselves up with the help of these advantages are now strong enough to stand without them.

I shall not discuss any proposition that requires an amendment of the Constitution of the United States. It is now more than a century since the Constitution has been amended by any method that can be repeated in the future. I doubt if there will be another amendment until there is another Constitutional Convention. Certainly there will be none until so far in the future that everything said here to-day will then be obsolete. Until then, the Federal power of regulation will apply only to the realm of commerce with foreign nations, among the several states and with the Indian Tribes. Until then, if an industrial stays at home and sells its goods there, Congress cannot reach it.

Some industrials however, like the United States Steel Corporation, engage directly in the transportation of commodities between the states. Others, like those in the anthracite coal region, are owned and operated by interstate railroad companies. All probably desire to take part in interstate commerce, in order to sell and ship their goods across state lines. There, if anywhere, is their vulnerable point.

I suppose it to be the orthodox view that the industrial trust is a product entirely of natural conditions. From this the orthodox deduction is that the trust could not have been prevented and cannot be destroyed. Let us see just how far this is true.

The industrial trust of the present day is a corporation, or a combination of corporations.[2] It could not have arisen in its present form under the common law, because the common law did not authorize individuals to incorporate themselves. That it might have arisen in some other force we may guess if we so please, but no experience authorizes us to say so. Probabilities are to the contrary. Human nature puts obstacles in the way of joining so large a number of people in a common enterprise, and keeping them voluntarily together. Fuggers and Rothschilds occasionally appear; but only in rare instances would a body of men remain amicable enough, as well as rich enough and wise enough and fortunate enough to wield such great power for a long period without some such artificial tie as a corporation charter.

And even under the earlier and simpler form of corporation, which could not merge with another company or swallow it up, experience seems to have shown that human nature afforded obstacles to the rapid and complete development of the modern trust. As a general rule, until a time within the memory of men now in middle life, two corporations could not merge or consolidate.[3] In New York, for instance, the first authority to merge manufacturing companies was in 1867. It was confined to those engaged strictly in the same industry. It was not broadened until 1892. The first similar authority as to railroads was in 1869 and confined to continuous lines. Lines merely connected were not authorized to consolidate until 1881, and then only if not parallel or competing.

Until the same period, as an almost universal rule, one industrial corporation could not hold the stock of another for control.[4] In New York, for instance, the first act enabling

[2] If there are any genuine exceptions they are negligible.

[3] 2 Morawetz on Corporations, § 940; Sugar Trust case, 121 N. Y. Reports, 582.

[4] 1 Morawetz, § 431; Elkins *v.* Camden & Atlantic R. R., 36 New Jersey Equity Reports, 5; De la Vergne *v.* German Savings Inst., 175 U. S. Reports, 40, 54-58. The Georgia Constitution of 1877 forbids this in a clause drawn up by Robert Toombs. Trust Co. *v.* State, 109 Georgia Reports, 736.

one industrial to purchase and hold stock of another was passed in 1853, permitting a manufacturing company to purchase mining stock in certain cases. The principle was extended, but in very restricted form, in 1866 and 1876. It did not become general, or permit buying the stock of a competitor, for sixteen years later still. In New Jersey the movement began in a very small way in 1883. The present statutes, which permit any company to purchase stock of a rival for control, are more recent even than the Sherman Anti-Trust Law. They were in all probability adopted, although the legislatures did not know it, for the very purpose of circumventing that law. They date in New York from 1892. In New Jersey their development was from 1888 to 1893. Before that the holding corporation, now so familiar, was a rarity.[5]

Thus all the trusts are in part a product of artificial conditions produced by human legislation, while some of the most dangerous, or at least the most unpopular, among them are a product of legislation obtained by their own lawyers and legislative agents, put quietly through under the cover of the anti-trust agitation, while the public, led by the newspapers, were looking somewhere else. None of the trusts are Federal in origin. Each derives its claims to power from the statutes of some particular state. By what right, then, can the Federal government touch them? To answer this question it is necessary for us to recall to mind a few of the elementary principles of corporation law.

Proper understanding of this matter has been obscured by the prevalence of certain notions that seem to me to be fallacies originating, like many other fallacies, out of the substitution of names for things.[6] It is common and in a sense proper to say that a corporation is a person. Really, as our courts recognize, it is a number of persons who have received from Congress, or from some other legislative body, a license to act together in a certain way. It is common and in a sense proper

[5] There were some under special charters, such as the Pennsylvania and the Southern Pacific.

[6] See authorities collected by the writer in an article on the "Northern Securities Company" in the Yale *Law Journal* for June, 1902.

to say that a share of stock in a business corporation is a piece of property. Really, it is the evidence of membership in a common enterprise. When an ordinary partnership incorporates itself, the world's valuation is nominally increased by the amount of the capital stock. Really, there is no more property in the world than there was before.

Each state, when issuing such a license, may accompany it with whatever conditions it may think best. The corporate powers may be limited. The number of members may be limited. The proportionate share which any one member is permitted to hold may be limited. His proportionate vote may be made less than his proportionate share. Membership may be restricted to citizens. Membership may be denied to foreign corporations, or to all corporations. Conversely, the right to hold membership in other corporations may be denied. All of these things follow from the fact that the whole jurisdiction is exclusively in the incorporating state, which may deny the privilege altogether. Restriction upon the amount of capital stock was in early days almost universal, and there were well known instances of a recognition of the right to restrict membership.[7]

Furthermore, these licenses given by a state are self-operative only within its borders. It is common to issue a charter authorizing the persons chartered to do business in other states, and as a general rule they are permitted by those other states to do so; but this permission is not universal and it may be withheld. For a New Jersey corporation to do business in Illinois requires the joint permission of New Jersey and Illinois, just as, when the United States sends a consul to a foreign country, he cannot act until to the commission which he brings with him he has added the exequatur which evidences the assent of the country to which he is accredited. With the

[7] The United States Bank charters of 1791 and 1816 each restricted the amount to which a single member could subscribe. The former allowed membership to "any person, co-partnership or body politic;" the latter to "individuals, companies or corporations." Both restricted the voting power of shares held in large blocks, a practice then common and analogous to that by which some recent charters, following English precedents, classify their stock, giving part much greater voting power than the rest.

single exception that I shall mention in a moment, each state can exclude from doing business within its borders all corporations but those which it has chartered, unless in some special case it may have bound itself by implacable contract not to exercise the right. It may therefore impose upon the admission of foreign corporations such conditions as it pleases;[8] and it may deny admission to all companies so constituted or controlled as not to comport with its own public policy.

Our industrial trusts have all been organized, so far as I am aware, under statutes which reserve to the legislature the right to amend, alter or repeal.[9] It is a right which belongs only to the state by which the license was issued; but the state in which the corporation does business can likewise revoke its permission to remain, or impose any conditions thereupon. It is at most requisite that sufficient time be given for the corporation to wind up its affairs without calamity.

The single exception to which I have referred is that of commerce with foreign nations, among the several states, or with the Indian tribes. Congress has the power of regulation here—a power which knows no limits except those which are put upon it by the Federal Constitution.[10] Congress itself may grant a charter of incorporation to persons engaging in such commerce.[11] A state cannot exclude therefrom any corporation which Congress permits to engage in it.[12] Congress has always given tacit permission to corporations of the various states to engage in such commerce, but I think that if it shall change this policy, and impose conditions upon the participation by a state corporation in interstate commerce, precisely as the states impose conditions upon the participation of a foreign

[8] 2 Morawetz, § 971. A striking illustration is Doyle *v.* Continental Ins. Co., 94 U. S. Reports, 535. This principle has been applied to the case of anti-trust laws in Waters-Pierce Oil Co. *v.* Texas, 177 *id.*, 28.

[9] For instances of its exercise, see Pearsall *v.* Great Northern Ry. Co., 161 *id.*, 646; McKee *v.* Maynard, 179 *id.*, 46; People *v.* O'Brien, 111 N. Y. Reports, 1.

[10] Lottery case, 188 U. S. Reports, 321.

[11] Luxton *v.* North River Bridge Co., 153 *id.*, 525.

[12] Pensacola Telegraph Co. *v.* Western Union Telegraph Co., 96, *id.* 1.

corporation in their own internal commerce, the courts will sustain it. It may indeed have already bound itself to some particular company in such a way that the permission cannot be revoked without paying the company its present value; but I do not know that any of the industrial corporations hold such a privilege, and Congress would not be obliged to continue unconditionally any merely tacit permission.[13]

The application of these principles is manifest. Congress in the first place can exclude from interstate commerce altogether that form of trust which is known as the holding company. In enacting a new Interstate Commerce Corporation Law, and excluding all companies which do not conform to the requirements of that law, it may require that no company shall participate, any one of whose members holds or controls, directly or indirectly, more than so much in par value, or so much in proportion, of its capital stock. In the next place it may destroy, in their present form, such agglomerations as the United States Steel Corporation, or the members of the so-called Anthracite Coal Trust. It may do so by declaring that no company engaged in interstate transportation can engage or be interested in any productive industry, either directly or indirectly, by lease, stock ownership, bond ownership or otherwise. If it be true that the result of permitting the same corporation to control the mine and the railroad—a permission which our ancestors would not have given—is that it is enabled to, and does, so juggle its accounts as to deceive both the wage earner and the consumer, there is here a plain remedy.

It may be said that some way would be found to evade any such law as either of those I have suggested. To a certain

[13] Conn. Mutual Life Ins. Co. *v.* Spratley, 172 *id.*, 602. Of course, as long as interstate commerce remains in the hands of state corporations they must obey the laws of their creator as well as those of Congress. Louisville & Nashville R. R. *v.* Kentucky, 161 *id.*, 677, 701. A passage in the opinion in this case (p. 702) has since been quoted by one of the judges as confirming a supposed theory that the instrumentalities of interstate commerce, as distinguished from interstate commerce itself, are under supreme control of the states (193 *id.* at p. 383); but the writer of the opinion thus quoted did not concur in the interpretation, nor did the theory receive assent from a majority of the court.

extent this is true. But there would be grave, practical difficulties in the way of an evasion on a large scale. If it had not been for the practical difficulties in the way of establishing a monopoly without an effective bond to hold a majority together, and hold a minority down, these combinations would never have advanced from the shape of the gentleman's agreement to that of the holding company. And in remembering the evasions of the past, we must remember also that in the past we have kindly provided new laws for the purpose of enabling promoters to evade the old ones.

Dealing with the more simple forms of the industrial corporation, whose only interstate commerce is the shipment of its own goods across state lines by the agency of common carriers, would be less easy. Still Congress can regulate it by imposing conditions up to just short of where the company would prefer to retire from interstate commerce altogether, each of its factories selling only to jobbers at its own doors. The device of a selling company attached to every industrial, controlled by it through stock ownership, and doing its interstate commerce business, would prove insufficient. A convenient method of regulation would be through the issuance of a license, as recommended by Commissioner Garfield since this paper was prepared.

Of conditions which Congress might impose upon such a license, the first which naturally comes to mind is publicity. Most of the earlier companies, at the time when judicial precedents were being established, were comparatively small concerns, like the contemporary partnerships with whom they were competing. To prevent their being too much at a disadvantage in the competition, a strong tendency developed to preserve the secrecy of their books even from the stockholders. The latter were regarded as sufficiently protected by their ability to put in a new board of directors once a year. Diversity of interest between the directors and the stockholders was not the rule, but the exception. The injury that the latter feared was from the outside, not the inside. But in the large industrials, with their multitudes of ignorant stockholders, and with boards whose directors may be partly dummies,

partly men whose interests are more identified with other and possibly rival enterprises, conditions are altogether different. Control of a company may be more attractive than ownership of its stock. Secrecy may enable the insiders to speculate in the stock upon the market, and play upon the ignorance, the hopes and the fears of those whom they are supposed to protect. I believe it to be true that the trusts would have been far from reaching their present power if by this precise method certain men, whose talents would not have overtopped their rivals if they had not been accompanied by "a certain fortunate balance between unscrupulousness and respectability," had not been able to reach a degree of power that sufficed for the performance of feats hitherto impossible in finance.

A generation ago, the remedy of publicity would have been decidedly effective in checking the overdevelopment of the trust. Whether or not it is now too late I do not venture to say; but the demand for publicity is now becoming general, and I see no reason why it should not be fully granted, under proper regulations, as to every corporation great enough to constitute a political issue. It is indeed true that, if all the stockholders of a great corporation know what is going on, everybody else will know it too. I do not see why we should be afraid of that result. If such a corporation cannot be successful under conditions of publicity, then let it dissolve into smaller bodies. Indeed, the small stockholders of so great a corporation can be protected, and the necessary examination can reasonably be made, only through a public agency. There must be money behind the examiner, and this the public can well afford to spend, while there is a limit to the number of hours during which the company can spare the use of its books. By publicity I do not mean the kind intended by the law establishing the Bureau of Corporations at Washington. It may be more dangerous to the public to have the secrets of great corporations shared between their directors and a dominant political organization, than to have them confined to the directors alone.

Another possible condition would be, by reviving a former custom, to restrict the amount of capital stock of any such com-

pany, either directly or by imposing a graduated license fee, intended to be prohibitory after a corporation should exceed a certain size. Graduated taxation is allowable to the states, except those whose own fundamental law prohibits it.[14] It is allowable also to Congress, except where it comes in conflict with the peculiar provisions of the Federal constitution as to a direct tax.[15] But the distinctions which have been drawn between the property and license taxes,[16] between direct and indirect taxation,[17] have left the whole matter in such obscurity that a graduated license fee intended to reach the surplus as well as the nominal capital, as by assessing the stock at its actual value, would doubtless be hotly contested upon constitutional grounds. If the surplus could not thus be reached, a graduated license tax would not accomplish its main purpose. It would merely readjust the relation between par and market value of the stock. Difficulties of this kind complicate the plan of taxing the present trusts out of existence like the old state bank notes.

Irrespective of its ability to impose its own conditions upon the privilege of engaging in interstate commerce, it is altogether probable, although not undisputed, that Congress can supplement any state anti-trust legislation by excluding from interstate commerce any article made in violation thereof.[18]

Time does not permit discussion of other possible restrictions, but requires me to turn away from the things which Congress can do negatively, in order to say a word about what it can do affirmatively. The latter is a subject which has been recently, perhaps, more discussed by others. The most popular panacea has of late been a National Incorporation Law.

[14] Kochersperger *v.* Drake, 167 Illinois Reports, 122; Magoun *v.* Illinois Bank, 170 U. S. Reports, 283.

[15] Knowlton *v.* Moore, 178 *id.*, 41.

[16] See for instance People *v.* Home Insurance Co., 92 N. Y. Reports, 328; 134 U. S. Reports, 594.

[17] See for instance the Income Tax cases, 157 *id.*, 429, and 158 *id.*, 601, and cases therein cited; also Knowlton *v.* Moore, *supra*, and cases therein cited.

[18] Analogously to the Federal game law of 1900.

Constitutional objections it is proposed to evade in two ways.[19] The first way is by forming corporations in the territories and in the District of Columbia, ostensibly under the power to make necessary rules and regulations respecting those portions of the country,[20] but really with intent that they should travel away, just as if they had been born in New Jersey, Delaware or West Virginia, and settle down upon the several states. It is admitted that they would have no better standing there, in point of law, than if they had really come from New Jersey, Delaware or West Virginia. But it is hoped that they would receive at least the same toleration. It is also hoped that they would be so much more honest and respectable, so much better regulated and inspected, than the present trusts, that in time they would supplant them. The second plan is that Congress, under its power to regulate interstate commerce, should permit the incorporation of jobbing companies with incidental power to grow, mine or manufacture the articles in which they deal, the assumption being that the whole domain of production can be brought under Congressional auspices as incidental to the business of jobbing, just as railroads incorporated by Congress for interstate commerce are allowed incidentally to carry freight and passengers from one point to another in the same state. The supporters of this plan admit that its advisability is subject to criticism, as its success would so much increase the already rapid rate of centralization at Washington, and so much further burden our already overburdened governmental system. I think that the criticism is serious, and I think that the constitutional difficulty is serious also. The spawning of corporations for export is not a necessary or even a natural incident to the regulation of the District of Columbia. The productive industries of the United States are not in a very natural sense incidental to the jobbing business. Sustaining this plan would put a good deal of responsibility upon the Supreme Court. I am not sure that the court would accept the responsibility.

[19] See the able paper on a National Incorporation Law by Prof. H. J. Wilgus, in the *Michigan Law Review* for February, 1904.

[20] Constitution, Art. IV, § 3.

I have not discussed the present Sherman Anti-Trust Law, because the construction of a particular statute is not very important except to the parties concerned and their attorneys. If this statute is not sufficient, a better one can be enacted. The main difficulties in its construction have been difficulties necessarily inherent in our Federal system. It is very hard to draw the line between that commerce which Congress may control and that commerce which it may not control, and to which therefore the Federal statute must be held not to apply.[21] The enforcement of the statute has been slow, and we do not yet know how far it would go toward the accomplishment of its purposes if its possibilities were fully developed by plaintiffs who are not restrained by any fear of running a-muck; but the somewhat prevalent notion that there has been culpable inefficiency on the part of the Attorney-General is entirely unfounded, at least as to the earlier half of its history. The lower Federal Courts were at first strongly opposed to it; the judicial decisions establishing its partial constitutionality and its main principles of construction were not and could not have been obtained for many years after its passage;[22] and Congress made no appropriation for its enforcement until Ferruary, 1903. The preliminary investigations necessary to its general enforcement against industrial combinations are expensive as well as difficult; and the fact that there have been so few private actions for damages under the act shows the

[21] Compare United States *v.* Addyston Pipe Co., 85 Federal Reporter, 271; affirmed 175 U. S. Reports, 211; and Montague & Co. *v.* Lowry, 193 *id.*, 38, with Hopkins *v.* United States, 171 *id.*, 578; Anderson *v.* United States, 171 *id.*, 604; and Whitwell *v.* Continental Tobacco Co., 125 Federal Reporter, 454.

[22] The decisive case (United States *v.* Trans-Missouri Freight Asso., 166 U. S. Reports, 290) was argued in 1896, and decided by the casting vote of Justice Peckham, who had taken his seat during that year as successor to Justice Jackson, a strong opponent of the liberal construction of the law. (See *In re* Greene, 52 Federal Reporter, 104.) Congress failed to provide means for its efficient enforcement, as twice requested by Attorney-General Harmon in that year. Evidence against an industrial combination was not obtainable until about that time, when a discharged stenographer revealed to a district attorney the secrets of the Addyston Pipe case.

difficulty of proving its breach, since private individuals as well as the Federal Government may take part in its enforcement.

The construction of this statute has tended, so far as it has gone, to follow the literal meaning of its words. The first serious question—apart from that of its applicability to railroad companies, which is not relevant to the present discussion—was whether the judges were intended to have a dispensing power by which they could permit the existence of contracts or combinations in restraint of trade, provided the restraint appeared to them to be no more than reasonable. In the first test case [23] a majority of the judges stood to the language of the law,[24] and held that there was no such dispensing power. One of that majority has since changed his mind,[25] and this has led many to believe that the decision will be reversed when the question is again presented to the court. As I read their language, however, the judges are committed, and by a majority stronger than before, to the original ruling.[26] It seems to me also that the ruling was wise. It indeed sounds well to say that restraints of trade should be permitted whenever they are reasonable. Everybody would agree to that, as a theoretical proposition. The concrete case presented, however, is not whether a particular scheme is reasonable, but whether A or B thinks that it is. If A thinks one way and B another, A being a Commissioner of Corporations and B an overworked judge, who has heard counsel on each side for an hour apiece, which shall rule? Or is it better to decide what kind of schemes are safe to allow as a general rule, and prohibit all others, leaving to nobody a jurisdiction to permit

[23] Trans-Missouri case, *supra.*

[24] There is a somewhat prevalent notion that the words "restraint of trade" meant "unreasonable restraint of trade" at common law, but an examination of all the authorities by the writer as counsel in the Addyston case showed that the notion is erroneous. "Restraint of trade" might be reasonable and lawful or unreasonable and unlawful.

[25] Northern Securities Company *v.* United States, 193 U. S. Reports, at pp. 360-361.

[26] Four justices in the case last cited restated the rule at p. 391. Of the remaining four, one had actually written the opinion in which it was first laid down, another had concurred in that opinion. All four concurred in reaffirming the previous decision. (Compare pp. 386, 405.)

exceptions where he thinks they would be reasonable? The reasonableness of a gigantic industrial combination, like the reasonableness of a railroad rate, is a very difficult and complicated question of fact. The arguments pro and con, as upon the analogous question whether a new legislative restriction upon the rights of property or of contract is sufficiently reasonable to be considered due process of law within the meaning of the Bill of Rights, are not peculiarly adapted to judicial consideration, but are rather economic and political in character. In difficult cases their solution requires an amount of expert knowledge which judges ordinarily cannot be expected to have before the argument,—for while they are wise, they are not omniscient,—and which the over-burdened federal calendars do not permit them to acquire between the argument and the decision. If the present provision concerning restraints of trade be amended in the future, I think it will be wise to confine the amendment to a greater certainty of definition and otherwise leave it as it has been left by the court.

If anywhere, I think that such a dispensing power should be placed in some quasi-judicial body of experts, carefully selected and not discredited or disheartened by knowing that their rulings are to be reviewed by other men of no greater natural ability, of less special qualifications, and who can pay less attention to the case in hand. The Interstate Commerce Commission is often cited as an example of the failure of such a body to do good work. It is supposed to have failed because it has been so often reversed by the courts. But the Interstate Commerce Law, as the courts have construed it, allows new evidence to be introduced before them after the Commission has made its decision, while the court decides on the record before it without the special knowledge otherwise derived, which the Commission is expected to use. Thus the court has more material before it of one kind, and less of another. If review is allowed at all, the record should remain the same. The argument also involves a *petitio principii* in assuming that the court's decision is the right one. When the facts as usual are complicated and difficult, the Supreme Court acts on the assumption that not only the lower court

judges, but also the railroad officials themselves, are better qualified to decide than are the Commissioners appointed by Congress for that purpose. When the Commission decides against the railroads and the judges below decide in their favor, the Supreme Court will not sustain the Commission unless "convinced that the courts below erred." In other words when the lower judges agree with the railroads the decision of the Commission must be established beyond reasonable doubt in order to stand, no matter how careful the opinion of the Commission or defective the opinions of the judges, or how inconsiderable are the standing of the judges in the estimate of the bar.[27]

The present prevailing notion that all acts of quasi-judicial and even executive officers should be reviewed by the courts could be shown by many instances, I think, to be based on slight foundation.

The other serious question presented under the Sherman law—namely, whether its prohibition of combinations in restraint of trade "in the form of trust or otherwise" covered a combination in corporate form, chartered by one of the States of the Union—has been affirmatively decided by a majority vote of the Supreme Court, affirming a unanimous decision of four judges below.[28]

When I began, I said that I would say nothing about the economic and political aspects of governmental interference. Now I want to repent, and say a word on those also. The people who advocate such interference are accused by the orthodox of overlooking recent economic changes which are supposed to cut off forever the hope of a return to former competitive conditions. Perhaps there would be force in the reply that we may be now in a transition period, which in its own turn will come to an end within our generation or the next. It is not impossible, perhaps not improbable, that the Age of

[27] See for instance Interstate Commerce Commission *v.* Alabama Midland Railway Co., 6 Interstate Commerce Comm. Reports, 1; 69 Federal Reporter, 227; 74 *id.*, 715; 168 U. S. Reports, 144.

[28] Northern Securities case, 120 Federal Reporter, 720; 193 U. S. Reports, 197.

Invention will come to an end, because the things that are capable of invention by the human mind in its present stage of evolution will have been mostly invented; and I refer not only to inventions in the Arts and Sciences, but also to discoveries as to organization and methods of corporate and other business. When the discoveries have been made, it becomes comparatively easy to conduct a similar business on the new lines, and many people can be found who are capable of so doing. Many men can carry on a great executive department once established, and make minor improvements in the work, where only one could originally have organized it and set it going. And so, to concede that an executive department could not have developed a great industry in the first place does not necessarily involve a concession that it could not carry on that industry, upon lines developed by private enterprise, with no more than a negligible percentage of waste. By the middle of the twentieth century the world may have reached a condition comparatively static. If competitive conditions are then impossible, and state socialism seems the only alternative to a financial oligarchy, state socialism may appear to our children less impracticable and more tolerable than it does to us. From such an alternative in the future the advocates of governmental interference, without government ownership, are seeking an escape. Whether an escape by this road is possible or impossible can not be learned from the one sure teacher—experience—until further legislation has been tried.

THE REGULATION OF RAILWAY RATES.

HON. MARTIN A. KNAPP.

The purpose of this paper is merely to outline without elaboration the questions involved and the principles to be applied in the regulation of railway rates by public authority. If any argument is needed in support of the right and the duty of government control, it is found in an obvious and fundamental fact. Until modern discovery utilized steam as a motive power, the ordinary public road was the sole means of communication by land, the only pathway of internal com-